P.R. No. 429/06 (1)
Presented by Mamta Pare
dated 24/1/07

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION No.428/2006. Single Bench

PETITIONER : Uttar Kumar Bhoi (Assistant Teacher), S/o. Malikram, Aged about- 43 years, R/o. Village- Kamharpali, Tehsil- Saraipali, Distt. Mahasamund (C.G.).

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through : The Secretary, Education Department, D.K.S. Bhawan- Raipur (C.G.).
2. The District Education Officer, Mahasamund, District.- Mahasamund (C.G.).
3. The Naib Tehsildar, Saraipali, District.- Mahasamund (C.G.)

RECEIVED-COPY 24.1.06 C.E. to A.G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

The above named petitioner humbly and respectfully begs to submit as under: -

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HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 428 OF 2006

Uttar Kumar Bhoi

Vs.

State of Chhattisgarh & Others

O R D E R
(Dated 30th January, 2006)

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 428 OF 2006

Uttar Kumar Bhoi

Vs.

State of Chhattisgarh & Others

Present :- Shri Pushpendra Kumar Patel, counsel for the petitioner.

Shri A.S. Kachhawaha, Dy. Govt. Advocate for the State of Chhattisgarh.

O R D E R
(Dated 30th January, 2006)

Per Hon'ble Shri Fakhruddin, J

Heard.

2. By this petition under Article 226/227 of the Constitution of India the petitioner challenges the order dated 2-1-2006 (Annexure-P/1) passed by respondent No.2/The District Education Officer, Mahasamund, whereby the District Education Officer has suspended the petitioner from his services.

3. Learned counsel for the petitioner submits that the petitioner is working as an Assistant Teacher in Government Primary School, Banjibahal, Block Saraipali, District Mahasamund. He further submits that there is an allegation against the petitioner that he encroached upon the Government land and for this Nayab Tehsildar, Saraipali registered a case against the petitioner bearing case No.49-A/68/2004 and passed an order dated 11-4-2005 whereby the

Nayab Tehsildar imposed fine of Rs.500/- upon the petitioner under Section 248 of the M.P./C.G. Land Revenue Code. Learned counsel submits that against the order dated 11-4-2005, the petitioner preferred an appeal before the Sub Divisional Officer, Saraipali, which is registered as Revenue Appeal No.109-A/68/2004-2005 and the same is pending for consideration. He also submits that the District Education Officer issued the suspension order dated 2-1-2006 on the ground that the petitioner has not paid the fine amount of Rs.500/- in compliance of order dated 11-4-2005 passed by the Nayab Tehsildar, and ignored the order of Nayab Tehsildar and also violated the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966.

4. The contention of learned counsel appearing for the petitioner is that the petitioner has preferred statutory appeal before the Sub Divisional Officer alongwith an application for grant of stay. Learned counsel further submits that since the petitioner preferred an appeal which came up for hearing on 9-6-2005, on that date the record was called for and date was given for 11-7-2005. On 11-7-2005 the matter was fixed for 30-11-2005. On 30-11-2005 counsel was present and the case could not be taken up as the Sub Divisional Officer was busy and the matter was fixed for 12-1-2006. Learned counsel submits that before that on 2-1-2006 the District Education Officer passed the impugned suspension order.

5. The suspension order has been passed as a result of 'suspension syndrome'. It has to be issued in accordance with Rule 9(1) of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966.

6. Learned counsel appearing for the petitioner referred to Rule 9(1) of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966, which is relevant and quoted below :

> "9(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension –
>
> (a) where a disciplinary proceeding against him is contemplated or is pending, or
>
> (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial :
>
> [1][Provided that a Government Servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him:]
>
> Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.
>
> (2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority –
>
> (a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction."

7. Learned counsel for the petitioner placed reliance upon the decision of Supreme Court rendered in the case of ***State of Orissa (Through its Principal Secretary, Home Dept.) vs. Bimal Kumar Mohanty*** reported in ***(1994) 4 SCC 126***. He referred to para 13 of the judgment, which is relevant and quoted below:

"13. It is thus settled law that normally when appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to

> perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated carlicr, cach casc must bc considcrcd depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or invcstigation. It would bc anothcr thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

8. Learned counsel for the petitioner further placed reliance upon the decision of Supreme Court rendered in the case of ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and another*** reported in ***(1993) 3 SCC 679***. He referred to para 29 of the judgment, which is quoted below :

> "29. Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a 'suspension syndrome' and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an

inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of 'subsistence allowance', so that the employee may sustain himself. This Court, in *O.P. Gupta v. Union of India*[10] made the following observations with regard to subsistence allowance : (SCC p. 340, para 15)

> 'An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in *Khem Chand v. Union of India*[11] is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance – generally called subsistence allowance – which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. *The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is 'to remain alive as on food; to continue to exist'. 'Subsistence' means – means of supporting life, especially a minimum livelihood.'*
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> (emphasis supplied)"

9. Learned counsel for the petitioner also placed reliance upon the decision of Supreme Court rendered in the case of ***K. Sukhendar Reddy vs. State of A.P. and another*** reported in ***(1999) 6 SCC 257***. He referred to

paras 6 & 8 of the said judgment, which are quoted below:

> "6. The appellant was placed under suspension on 6-2-1997 by an order passed by the Chief Secretary to the Government of Andhra Pradesh under sub-rule (1) of Rule 3 till the completion of the disciplinary proceedings against him. This order was subsequently replaced by another order passed on 12-3-1997, in which it was clearly spelt out that disciplinary proceedings against the appellant were not at all contemplated, but since he was involved in Crime Case No.327 of 1996 registered under sections 468, 471, etc. by Anakapalli Town Police Station, he was being placed under suspension. This matter is still under investigation by the CID and a charge sheet has not yet been filed in the case.
>
> 8. We, therefore, allow this appeal and set aside the suspension order dated 12-3-1997 with the direction that the appellant shall be put back to duty and shall be paid all his arrears of salary up to date minus the suspension allowance, if any, already paid to him, leaving it open to the State Government consider the feasibility of placing the appellant under suspension, if and when a charge-sheet is filed by CID."

10. Learned counsel specifically stated that the order does not comes under Rule 9 (1) of the C.G. Civil Services (Classification, Control and Appeal) Rules, 1966 and apart from that the petitioner has not been convicted for any criminal offence.

11. It is borne out from the record that the petitioner has been suspended for non-payment of fine as imposed by the Nayab Tehsildar, but that is not the duty of the District Education Officer to collect fine amount. So far

as non-payment of fine is concerned, the Courts are competent enough to deal with the matter. The suspension order passed by the District Education Officer is not sustainable. It is wholly arbitrary and such arbitrariness cannot be allowed.

12. Having considered the facts and circumstances of the case, material on record and in view of the law laid down by the Supreme Court in the aforesaid decisions and further the fact that the suspension order has been issued by the District Education Officer only on the ground of non-payment of fine of Rs.500/- as imposed by the Nayab Tehsildar in case No.49-A/68/2004, in encroachment matter against which the appeal is still pending and the fact that the suspension order does not fall into any category under Rule 9 of the C.G. Civil Services (Classification, Control and Appeal) Rules 1966, the suspension order issued by the District Education Officer on 2-1-2006 (Annexure-P/1) is not sustainable and is accordingly quashed.

Accordingly, the petition is allowed.

Sd/-
Fakhruddin
Judge

Gowri*